

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes This bill may assist in ensuring proper accounting and auditing of county funds.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Article V, Section 16, of the Florida Constitution, provides that “the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds.”¹

In late 2007, Collier County, the Clerk of the Circuit Court, as custodian of all county funds, attempted to audit a bank account maintained by the chief of a local volunteer fire department, which the clerk believed contained money that should have been deposited into county accounts. The Board of County Commissioners sued the clerk arguing that the Clerk did not have the authority to audit accounts without approval of the board. The trial court ruled that there was no specific constitutional or statutory authority for the “Clerk to audit any and all outside bank account ‘whatsoever and wheresoever situated’ into which the Clerk believes county funds may have been improperly deposited.”²

Effect of Proposed Changes

House bill 399 requires the filing of financial statements by clerks of the circuit court. The bill designates the clerk of the circuit court as accountant to the board of county commissioners and as county auditor. The bill also prohibits checks or warrants from being drawn in excess of the known balance of a fund.

Section 4 of the bill requires the clerk, as county auditor, to prepare the annual report of the county, and to determine the adequacy of internal controls and compliance with contracts, applicable law, and rules. This provision appears to provide new authority to the clerk and may alter the relationship between a clerk and a county. The Auditor General states that the auditing functions are currently performed by the Auditor General or private independent CPAs as required by s. 218.39, F.S. In addition, a county may hire independent CPAs to perform audits under s. 125.01(1)(x), F.S. The Auditor General also notes that it is unusual to grant the same entity both pre- and post-audit authority.³

The portion of the bill assigning duties to the clerk would not affect those counties operating pursuant to a special law or county charter.

C. SECTION DIRECTORY:

¹ Art. VIII, Section 1(d), Fla. Const. provides that “[w]hen not otherwise provided by charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex office clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.” See also *Alachua County v. Powers*, 351 So.2d 32, 36 (Fla. 1977)(holding that absent an applicable general or special law approved by the electors, or a county charter, the clerk, under these constitutional provisions, is the ex officio clerk of the board of county commissioners, the auditor, recorder and custodian of all county funds.)

² *Brock v. Board of County Commissioners of Collier County*, Case No. 04-941-CA, consolidated with Case Nos. 05-953-CA and 05-1506-CA, 20th Cir. Ct. 2007). This case has been appealed.

³ Auditor General response to Committee staff e-mail.

- Section 1: Amends section 116.07, F.S., requiring clerks to keep financial statements.
- Section 2: Amends section 136.05, F.S., designating the clerk of the circuit court as accountant to the board of county commissioners and prohibiting a check or warrant from being drawn in excess of the known balance of a fund.
- Section 3: Amends section 218.31, F.S., designating clerk as county auditor and renumbering section.
- Section 4: Amends section 218.32, F.S., requiring clerk as county auditor to prepare annual report and perform audits.
- Section 5: Amends cross-reference in section 75.04, F.S.
- Section 6: Amends cross-reference in section 215.555, F.S.
- Section 7: Amends cross-reference in section 380.0662, F.S.
- Section 8: Amends cross-reference in section 420.503, F.S.
- Section 9: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The Auditor General suggests that the wording in section 1 “keep financial statements and books of account” should be changed to “prepare financial statements and keep books of account.” In sections 3 and 4, the Auditor General suggests that the Clerk’s auditing authority should be placed elsewhere because it does not fit within the purpose of s. 218.32, F.S. The Auditor General suggests that this additional authority should simply be granted to the clerk instead of referring to the clerk as “county auditor.”

Other Comments

The Florida Association of Court Clerks states:

There would be no fiscal impact. Clerks are already doing this in vast majority of counties. Where the clerk does not currently have the audit function due to charter or special act, the bill does not apply.

The Florida Association of Counties opposes this bill. The Association states:

The bill seeks to overturn a trial court opinion that was issued in Collier County in August of last year. The Florida Association of Counties (FAC) supports the trial court’s ruling in Brock v. Collier County Board of County Commissioners and must object to any legislation that seeks to overturn that ruling particularly when the trial court’s decision is currently on appeal. Any legislative response should await the final outcome of the judicial process. In addition, the Collier County decision upheld many years of what counties believe to be the law in the state with respect to the relationship between boards of county commissioners and clerks and that is that the unilateral scope of a clerk’s powers and duties are defined by the constitution, state law, or in delegations from the board of county commissioners. If a clerk wishes to perform duties that are outside the three sources, the clerk would not have the unilateral authority to do act.

The inclusion of “financial statements” in section 1 expands the clerk’s pre-audit powers beyond what they are under current law and conflicts with the authority that is otherwise granted to counties for their independent auditing authority under section 125.01(1)(x).

The alterations to section 2 of the bill require the clerk to be the accountant of the board of county commissioners whereas current law clearly authorizes that to be the case but

makes no such mandate. Counties have been allowed to work out that duty on a county-by-county basis, reflecting local circumstances and conditions.

The definition change in section 3 may have some adverse impacts on charter counties in particular. FAC is investigating this issue.

The additional language in Section 4 eliminates the ability of the board of county commissioners to have an independent auditor as the entity used to prepare its annual reports, naming the "county auditor" which under section 3 is now the clerk. This section 4 also expands the authority of the clerk to include the exercise of discretion regarding compliance with contracts, applicable laws and rules.

Despite the current disagreement between the Collier County Board of County Commissioners and its clerk, many counties in the state have resolved any disputes that have existed locally between the board and clerk over the clerk's authority, function and duties. Even in the Collier County litigation, there are several basic principles on which the clerk and the board agree. FAC is deeply troubled by a state law cure to what may very well be a local situation and one that is currently making its way through the courts and will receive a final judicial decision in the future.

STATEMENT OF THE SPONSOR

The legislation provides clarification for what Clerks of the Circuit Court have been doing for well over a century in their duties as County Auditor.

The bill clearly spells out a clerk's authority to prepare financial statements and perform all audits of local spending which is current practice in a vast majority of counties.

The bill does not affect counties where the audit function is performed differently due to Special Act or Charter provisions.

Clerks are independently elected custodians of taxpayer dollars. It makes good fiscal sense that the local clerks provide oversight in how the county spends its public funds.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES